

Scottish Women's Convention
response to the Scottish
Parliament's consultation on:

Victims, Witnesses and Justice Reform (Scotland) Bill



September 2023

Premise

Currently, victims and witnesses are not sufficiently cared for within Scotland's criminal justice system. In order to rectify this, the Scottish Parliament is considering a new law which will aim to improve the experiences of these groups, with a particular focus on those who have experienced or witnesses sexual crime.

This consultation has made multiple suggestions to create a safer system, including a new Victim and Witness Commissioner post, single judge rape trials, further implementation of trauma-informed practice and the removal of the 'not proven' verdict.

After the Scottish Parliament has received consultation responses, they shall consider alterations that are required and rectify their plan accordingly – incorporating suggestions made.



The Scottish Women's Convention (SWC)

The SWC is funded to engage with women across Scotland to ensure that their views are represented in policy and decision-making processes. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at Scottish, UK and international levels.

The SWC gathers information using different methods, including roadshows, thematic conferences, surveys, and both in-person and online roundtable events. This submission presents the views of a range of women, reflecting their opinions, ideas and lived experience. Working together with many other equalities organisations and community groups, we use our broad network to ensure that women from a range of backgrounds are heard and acknowledged. We are continually reviewing innovative ways of engaging with women and developing our trauma-informed and culturally sensitive practice to support vital contributions from as many women as possible.

Victims and Witnesses Commissioner for Scotland

What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

The establishment of a Victims and Witnesses Commissioner for Scotland will provide increased protections for those directly impacted by crimes. Currently, women feel a sense of trepidation when reporting criminal offences, with negative attitudes stemming from decades of poor care and disbelief when reporting sexually motivated crimes in particular, as well as domestic abuse. As a result, those who have experience of the criminal justice system, do not feel properly protected and believe that significant change is required to reduce these feelings.

Women explained that through better training and a victim-centred approach, which could be provided by a new Commissioner, they would feel a sense of protection. It is, however, key that training is at the heart of such a role, as well as throughout the justice system at all levels, particularly trauma-informed practice. Women have also expressed disappointment at the continued ignorance of criminal justice professionals when it comes to domestic abuse. They stated that current training efforts have improved the situation, however, more must be done to protect survivors of domestic abuse.

- “I’m having to go to court...And we’re all having to go to the city, how am I going to get there, I don’t know, where am I going to stay? Nobody cares... they want me to be a witness, but not help me do it. There’s no support.”
- “I’ve been in this job [domestic abuse support] for ten years, and when I started the police were horrendous...But the more it’s in the media, the more people are seeing it, people are talking about it now.”
- “I’ve had this conversation with a police officer about when they’re doing their domestic abuse inquiries, do they actually ask them about sexual abuse...His answer was ‘You know the police, they’ll take a shortcut where they can’”

Women also feel reluctant to approach the justice system due to engrained misogyny. We recently conducted a review of the upcoming misogyny law, finding that women were sceptical around the impact of such a law. Furthermore, during this project, women spoke of their continued mistrust of justice officials due to witnessed misogynistic behaviour and views. They were concerned that misogyny is an integral element of current justice systems in Scotland, and clear work has to be carried out to tackle misogynistic behaviours. Therefore, the establishment of a Victims and Witnesses Commissioner for Scotland may alleviate tensions between women and justice system professionals, with misogynistic behaviour more likely to be handled effectively.

- “I have serious concerns about the police and the legal system’s abilities to tackle misogynistic harassment in any constructive way. This is based on my own experiences of dealing with the police, as well as a deep scepticism about Scottish Police’s history more generally”
- “...what happens when you put in a misogyny thing, and female cops start to put in complaints against their colleagues, who’s going to police the police?”

Trauma-Informed Practice in Criminal and Civil Courts

What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

Part 2 of the Bill is vital in its creation, with trauma-informed practice having to be integrated throughout. Without trauma-informed practice, witnesses and victims will continue to be left behind by the criminal justice system, and trust will not be reinstated. Ensuring that this trauma-informed approach is taken throughout the justice system is major, with it being key that all members of justice staff carry out trauma-informed training, from administrators to police officers, and the responsibility of implementing such a change should be that of a new Commissioner. Such a trauma-informed approach allows victims and witnesses to be centred across the justice system, creating further protection and again, repairing damage done by continued ignorance towards victims and witnesses. We therefore welcome the creation of this post, and the inclusion of trauma-informed practice within the post’s key roles.

It would be advisable however, that a new Commissioner be given the responsibility of ensuring counselling services are available to distressed victims and witnesses, with a close relationship with Victim Support Scotland being key, as well as wider counselling services. Furthermore, this collaborative approach must be carried out with other public services, as women have explained that trauma-informed practice is not guaranteed across Scotland. For example, when speaking with women from rural areas, they explained that the local police station is not open 24 hours a day, meaning that if a sexual offence occurs, a victim may have to travel to a larger town or city, potentially hours away. Once they have been reviewed by a medical professional, they are then not guaranteed a return trip via the emergency services, having to travel hours alone, in an unknown city. This is fundamentally not trauma-informed, with limits to services in rural areas adding a further layer of complexity to justice-accessibility. We therefore recommend working with other public services to ensure that all women in Scotland have access to good levels of justice, and that rural areas are considered in more detail.

- “Another thing is that we don’t have a full-time police station, it’s part-time. So, if you’re sexually assaulted in the evening you have to be taken elsewhere. It’s so sad.”
- “We don’t have a clue if they bring you back. Services might take you up there to get treatment or checked, but they might not bring you home. You’ve just been raped, been dragged all the way up to Glasgow, you’ve just been assessed, and then they’re just going to leave you there on your own.”

Special Measures in Civil Cases

What are your views on Part 3 of the Bill which deals with special measures in civil cases?

We support the inclusion of Part 3 which deals with special measures in civil cases, as ensuring the safety and wellbeing of vulnerable persons is particularly important for a new Commissioner. It is likely that vulnerable individuals will not always be able to provide proper self-advocation, and as such require additional support throughout the court process. Creating a safe space for witnesses and victims has been called for by women, with some stating that the current process actively dissuades women and children from being active participants during court proceedings.

- “...people aren’t trauma informed. Again, I can work with children until I’m blue in the face, but the courts, social work and children’s hearings, they’re not getting the whole

picture. They're making decisions that affect children and these children have no trust in professionals, the trust is gone.”

Also, the physical spaces victims and witnesses occupy should also be considered, with women explaining that the oppressive nature of courts can contribute to further distress. Victims and witnesses should therefore be given alternative locations where possible, digital options, or the opportunity to familiarise themselves with courts prior to trial. The further inclusion of digital options for victims and witnesses also provides a good opportunity to properly protect these groups, however it is recommended that the new Commissioner carry out regular reviews of effectiveness, as digital literacy will vary across communities. Therefore, it is valuable to include special measures within civil cases which can alleviate stress and anxiety around the justice system.

Removal of Not Proven Verdict

What are your views on the proposal in Part 4 of the Bill to abolish the not proven verdict and move to either a guilty or not guilty verdict?

At the SWC, we support the move to two verdicts rather than three in Scotland, with the 'Not Proven' verdict being consistently used against women – particularly those who have experienced sexual assault and/or domestic abuse. The 'Not Proven' verdict was generally seen as an extension of 'Not Guilty', despite possessing different classifications. Therefore, the move to two verdicts would better protect women and girls across Scotland, while also providing clarity for victims and the general public.

Sexual Offences Court

What are your views on Part 5 of the Bill which establishes a Sexual Offences Court?

With regards to sexual assault, change is clearly needed in Scotland. Convictions rates are shockingly low, with stereotypes and misogyny contributing to disbelief of victims' statements. Therefore, the move to a specialised Sexual Offences Court, may provide an increasingly reliable court system for women, as well as a safer society. We do not believe that convictions should be chased purely to increase figures, however the trialling of such courts may provide further clarity around the issue, and offer a better option for victims of rape, sexual assault and domestic abuse.

Anonymity for Victims

What are your views on the proposals in Part 6 of the Bill relating to the anonymity of victims?

Anonymity is an integral element of any changes to justice reform focused on victims and witnesses. Having anonymity allows victims and witnesses an increased level of protection, while simultaneously reducing the impact of the stress of court. Court can be an incredibly distressing experience, and therefore, anonymity provides victims and witnesses with a barrier between themselves and the physical court, allowing them to give their crucial testimony, while in a safe space.

Pilot of Single Judge Rape Trials with No Jury

What are your views on the proposals in Part 6 of the Bill relating to a pilot of single judge rape trials with no jury?

As stated above, change is clearly needed with regards to rape and sexual assault trials. Currently, stigma and engrained assumptions contribute to low conviction rates amongst juries, and instead a single-judge rape trial may create an improved experience for victims. It is encouraging to see the inclusion of full training should be carried out by the sitting judge, as this will provide increased validity of the new trials. We support a pilot programme, as this can facilitate change, while also assessing potential risks and disadvantages to this new approach.

Conclusion

Having listened to women, our three key recommendations on this topic are:

- Ensure trauma-informed practice is fully embedded throughout the criminal justice system, across all job roles and physical spaces.
- Continue with developments of the Scottish criminal courts, including the removal of the 'not proven' verdict.
- Carry out a testing period of single judge rape trials, to guarantee that they are well-rounded and fair forms of justice.

The SWC is grateful for the opportunity to respond to the Scottish Parliament's consultation on **Victim, Witnesses and Justice Reform (Scotland) Bill**. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information or to share your views, please contact:

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